

1 Meryl Macklin (CA State Bar No. 115053)
2 *meryl.macklin@bryancave.com*
3 Daniel T. Rockey (CA State Bar No. 178604)
4 *daniel.rockey@bryancave.com*
5 BRYAN CAVE LLP
6 560 MISSION Street, 25th Floor
7 San Francisco, CA 94105-2994
8 Telephone: (415) 268-2000
9 Facsimile: (415) 268-1999

10 Attorneys for Defendants:
11 MISSION SAN JOSE AIRPORT, LLC and MISSION YOGURT, INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

14 AREAS USA SJC, LLC, a California limited
15 liability company,

16 Plaintiff,

17 v.

18 MISSION SAN JOSE AIRPORT, LLC, a
19 Colorado limited liability company, and
20 MISSION YOGURT, INC., a Colorado
21 corporation,

22 Defendants.

CASE NO. CV11-04487 HRL

**MISSION DEFENDANTS' COUNTER
DESIGNATIONS TO PLAINTIFF'S
DESIGNATED DEPOSITION EXCERPTS
AND MISSION'S OBJECTIONS TO
PLAINTIFF'S DESIGNATED DISCOVERY
RESPONSES**

**Complaint Filed: September 9, 2011
Trial Date: January 7, 2013**

PRELIMINARY STATEMENT AND OBJECTION

Plaintiff Areas USA SDJC, LLC (“Areas”) submitted highlighted deposition transcripts and submitted a table purportedly listing the portions of the depositions it intended to designate for use at trial. The two documents are inconsistent in numerous ways, with many of the portions highlighted not appearing anywhere on Areas’ table of designations. Accordingly, Mission has no idea which deposition excerpts Areas actually intended to designate and objects to both its highlighted excerpts and its listed excerpts on that basis. For purposes of Mission’s counter-designations, Mission has used the highlighted excerpts which appear to more complete, but reserves the right to object to excerpts not listed therein.

I. DEPOSITION COUNTER-DESIGNATIONS

Counter Designations to Deposition Testimony

Plaintiffs’ Designation	Objection	Defendants’ Counter Designation
Justin Jackson - September 21, 2012		
19:8-13 (longer than list)	Completeness	19:14-20:23
24:1-2 (not on list)	Completeness	23:19-25
27:10-28:18 (longer than list)	Completeness	28:19-29:8
60:2-63:5 (longer than list)	Completeness	63:6-19
65:12-65:25	Completeness	66:1-23
Stanley Jackson - September 20, 2012		
16:17-18 (not on list)	Completeness	16:6-16, 16:19-17:7
17:8-24	Irrelevant Speculation	
18:20-20:9	Completeness	18:2-19
44:5-21 (longer than list)	Relevance; 44:5-14	
47:7-47:24	Completeness	47:1-6
49:16-50:7 (not on list)	Completeness	50:8-11
55:6-23 (longer than list)	Completeness	54:9-55:5
56:2-56:12	Completeness	56:13-58:8
58:12-23 (not on list)	Completeness	58:24-59:6

Plaintiffs' Designation	Objection	Defendants' Counter Designation
59:15-60:2 (not on list)	Completeness	60:4-7
99:3-100:6	Completeness	100:7-14
114:16-116:25	Irrelevant, objections withdrawn; 116:1-17	
145:18-25 (shorter than list)	Hearsay	
161:22-25 (not on list)	Completeness	162:1
Jeffry Reddy – August 22, 2012		
7:11-9:15 (shorter than list)	Completeness	9:16-22
Mark Schafer – August 22, 2012		
8:2-7 (not on list)	Completeness	8:8
22:17-22 (not on list)	Completeness	20:20-21:16
25:14-16 (shorter than list)	Completeness	24:10-25:13
46:8-14 (shorter than list)	Irrelevant	
50:3-51:6 (longer than list)	Irrelevant	
57:11-24 (not on list)	Completeness	55:10-57:10
63:18-63:24	Completeness	59:10-63:17
Roderick Tafoya – August 23, 2012		
29:16-24 (not on list)	Completeness	29:10-15
38:5-13 (not on list)	Completeness	38:14-39:22
41:4-9 (not on list)	Completeness	41:10-42:10
56:3-13 (shorter than list)	Completeness	
64:1-65:1 (not on list)	Remove attorney objections	
70:17-25 (not on list)	Completeness	71:1-15
76:17-23	Completeness	76:24-77:2
106:14-107:20	Irrelevant; 107:3-5	
141:9-17 (longer than list)	Irrelevant	
142:1-143:12 (longer than list)	Irrelevant	

Plaintiffs' Designation	Objection	Defendants' Counter Designation
155:18-25	Completeness	155:6-17
158:18-21 (not on list)	Irrelevant	
161:19-163:4	Irrelevant	
165:23-166:14 (not on list)	Completeness	163:23-1664:22, 166:15-19

II. OBJECTIONS TO PLAINTIFF'S DISCOVERY RESPONSE DESIGNATIONS

1. Defendants' Mission San Jose Airport, LLC and Mission Yogurt, Inc.'s Responses and Objections to Plaintiff's First Set of Interrogatories, served on March 30, 2012

Mission objects to any attempt by Areas to introduce as evidence Mission's responses to Areas' First Set of Interrogatories Nos. 1-3 other than Mission's Further Amended Responses and Objections, served on September 10, 2012. Mission amended its responses on September 10, 2010 to conform to the record evidence as established in discovery. In particular, as Areas' counsel well knows (because he established it at deposition), none of the drawings or depictions that Mission may have seen prior to entering into a contract for TA-21 depicted either the baggage conveyor or the CTX machines below TA-21. Tafoya had previously thought perhaps one of the drawings depicted the baggage conveyor, but in deposition clearly testified that the diagrams he viewed did not include the baggage system. Accordingly, Mission amended its responses to correct the record. Although Areas knows this, it clearly intends to try to use Mission's earlier, superseded responses to advance a set of facts it knows to be untrue and which the evidence does not support. FRE 401, FRE 403.

2. Mission's Amended Responses and Objections to Plaintiff's First Set of Interrogatories, served on May 29, 2012

Mission objects to any attempt by Areas to introduce as evidence Mission's responses to Areas' First Set of Interrogatories Nos. 1-3 other than Mission's Further Amended Responses and Objections, served on September 10, 2012. Mission amended its responses on September 10, 2010 to conform to the record evidence as established in discovery. In particular, as Areas' counsel well

1 knows (because he established it at deposition), none of the drawings or depictions that Mission may
 2 have seen prior to entering into a contract for TA-21 depicted either the baggage conveyor or the
 3 CTX machines below TA-21. Tafoya had previously thought perhaps one of the drawings depicted
 4 the baggage conveyor, but in deposition clearly testified that the diagrams he viewed did not include
 5 the baggage system. Accordingly, Mission amended its responses to correct the record. Although
 6 Areas knows this, it clearly intends to try to use Mission's earlier, superseded responses to advance a
 7 set of facts it knows to be untrue and which the evidence does not support. FRE 401, FRE 403.

8
 9 **3. Mission's Further Amended Responses and Objections to Plaintiff's First
 Set of Interrogatories, served on September 10, 2012**

10 Mission has no objection to the use of the Mission's substantive response to Nos. 1-3 but
 11 objects to the introduction as evidence Mission's objections to the interrogatory pursuant to FRE 401
 12 and FRE 403.

13
 14 **4. Mission's Responses and Objections to Plaintiff's Third Set of
 Interrogatories, served on June 11, 2012**

15
 16 Mission objects to the introduction as evidence Mission's objections to the Interrogatory No.
 17 7 pursuant to FRE 401 and FRE 403.

18
 19 **5. Mission's Responses and Objections to Plaintiff's First Set of Requests
 for Production, served on March 30, 2012**

20
 21 Mission objects to the introduction as evidence Mission's responses and objections requests
 22 for documents because they lack any substantive, factual information pursuant to FRE 401 and FRE
 23 403. Areas clearly intends to try to prejudice the jury against Mission by reciting objections to
 24 document requests. This is obviously improper.

III. CERTIFICATION

I hereby certify that I have met and conferred with counsel prior to filing these objections in accordance with the Court's Standing Order re: Pretrial Preparation.

Dated: December 11, 2012

BRYAN CAVE LLP

By: /s/ Daniel T. Rockey
Daniel T. Rockey